(1998) 01 DEL CK 0078

In the Delhi High Court

Case No : IT Reference No''s. 315-318 of 1985

Hydel Construction Co. (P.) Ltd. — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 13-01-1998

Acts Referred:
Income Tax Act, 1961 — Section 80HH, 80J

Citation : (1999) 102 TAXMAN 155

Hon'ble Judges : R.C. Lahoti, J;Dalveer Bhandari, J

Bench : Division Bench

Advocate : R.D. Jolly, Sanjeev Khanna, Ajay Jha and Ms. Prem Lata Bansal, for the Respondent

Judgement

R.C. Lahoti, J.—These four reference applications arising out of the assessment years 1979-80 and 1980-81 refer the following two questions of law for the opinion of the High Court :

"1. Whether, on the facts and in the circumstances of the case, the assessee-company was eligible for deduction under sections 80J and 80HH of the income tax Act, 1961 and the assessee?s undertaking could be held to be manufacturing or producing articles within the meaning of sections 80J and 80HH for the assessment years in question ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in directing the income tax Officer to consider the assessee?s claim for investment allowance for the assessment years in question for being allowed provided all other conditions laid down in that section were satisfied ?"

The first question has been stated at the instance of the assessee and is common to both the assessment years. Question No. 2 has been stated at the instance of the revenue and is common to both the assessment years.

2. The finding of fact recorded by the Tribunal is that the assessee was engaged

in the activity of making of tunnels, dams, etc., and, hence, would be considered to be engaged in the processing of the goods and not in the manufacture of articles and, hence, it was not an industrial company. The law is settled by two pronouncements of the Supreme Court in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, and Builders Associations of India Vs. Union of India and others, In the backdrop of the facts found and applying the law laid down by the Supreme Court in the abovesaid decisions, both the questions are answered in the negative, i.e., in favour of the revenue and against the assessee.

